

COMMONWEALTH OF VIRGINIA
PRECEDENT DECISION MANUAL
REVISED (1-97)

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ABLE AND AVAILABLE

5. General.

Includes cases containing (1) a general discussion of the meaning of the term “able and available” or (2) ability or availability points which do not fall within any specific line in the Able and Available division of the Code.

40. Attendance at school or training course.

Includes cases in which consideration is given to effect upon the claimant’s availability of his enrollment or attendance at school, college, or training courses.

70. Citizenship or residence requirements.

Cases involving citizenship or residence as a prerequisite for employment.

90. Conscientious objection.

Includes cases in which a claimant restricts the employment acceptable to him because of conscientious objection on ethical or religious grounds.

105. Contract obligation.

Includes cases in which a claimant is bound by contract which prevents him from accepting other employment.

150. Distance to work:

150.05 General.

Includes cases containing (1) a general discussion of distance, (2) points not covered by any other subline under line 150, or (3) points covered by three or more sublines.

150.1 In transit.

Where a claimant travels to or from the locality of his work or residence and a distant locality or localities, remaining at any one point only a short time.

150.15 Removal from locality.

Involves permanent removal to another locality, temporary removal from the locality of work, and willingness to move to another locality to work.

150.2 Transportation and travel.

Involves transportation cost, convenience, facilities, and time.

155. Domestic circumstances:

155.05 General.

Includes cases containing (1) a general discussion of domestic circumstances, (2) points not covered by any other subline under line 155, or (3) points covered by three or more sublines.

155.1 Children, care of.

Where claimant places restrictions on acceptance of work because of his need to care for children. Cases involving illness of children are found under the subline "Illness or death of others," below.

155.15 Financial circumstances.

Where the economic or financial circumstances of claimant's family are considered in determining whether or not the claimant is available for work.

155.2 Home or spouse in another locality.

Where a claimant is unwilling to accept work in the vicinity because of his desire to accompany or to join his spouse in another locality, or because of his reluctance to leave his home or spouse.

155.25 Household duties.

Where a claimant is unwilling or unable to accept employment because such work would interfere with the performance of household duties.

155.35 Illness or death of others.

Involves restrictions on a claimant's availability for work because of illness or death of others.

155.45 Parent, care of.

Involves restrictions on acceptance of work because of the need to care for a parent who is aged or in-capacitated. Cases involving illness of parents are placed under the subline "Illness or death of others," above.

160. Effort to secure employment or willingness to work:

160.05 General.

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160.1 Application for work.

Where claimant's application, or failure to apply, for work is considered in determining his availability for work.

160.15 Attitude or behavior.

Applies to cases where claimant's attitude or behavior indicates willingness or unwillingness to work.

160.2 Employment.

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160.25 Refusal of work.

Effect of refusal, or repeated refusals, of work upon the claimant's availability for work.

160.3 Registration and reporting.

Registration and reporting, failure to register and report, or failure to register or report in the proper locality, or in the proper form.

160.35 Voluntary leaving or suspension of work.

Where the fact that the claimant left or suspended work voluntarily, or his reasons for doing so, are considered in determining his availability for work.

165. Employer requirements:

165.05 General.

Includes cases containing (1) a general discussion of employers' requirements, (2) points not covered by any other subline under line 165, or (3) points covered by three or more sublines.

165.1 Bond.

Employer's requirement that a claimant furnish a bond prior to becoming employed.

165.15 Marital status.

Where company rules prohibit the hiring of, or retention in employment of, married women.

165.2 Physical status.

Employer's requirement that a claimant submit to a physical examination as a prerequisite to employment or reemployment, or a rule prohibiting the employment of persons over or under a certain age, height, or weight, or those suffering from certain diseases or disabilities.

180. Equipment.

Includes cases which discuss claimant's inability to furnish necessary tools, special clothing, or other equipment as affecting his availability.

190. Evidence:

190.05 General.

General discussion of evidence, or of specific points of evidence, not covered by either of the other sublines under line 190.

190.1 Burden of proof and presumptions.

Applies to discussions as to which party has burden of proof when ability to work or availability for work is at issue, or as to legal adequacy of particular evidence to overcome presumptions concerning ability to work or availability for work.

190. Evidence - Continued

190.15 Weight and sufficiency.

Discussion of the weight and sufficiency of the evidence as to a claimant's ability to work or his availability for work.

195. Experience or training.

Includes cases in which the extent or the lack of a claimant's education, experience, or training is a factor in determining availability for work.

215. Government requirements:

215.05 General.

Includes cases containing (1) a general discussion of government requirements, as they affect a claimant's availability, (2) points not covered by any other subline under line 215, or points covered by all the sublines.

215.1 License or permit.

Discussion of the effect of work or health permit or license requirements upon claimant's availability for work.

215.15 Manpower regulation.

This line was used for the duration of the war only. Included cases involving War Manpower Commission policies and regulations concerning the placement of workers. These cases were published under code line 75 of the bound Series.

235. Health or physical condition:

235.05 General.

Includes cases containing (1) a general discussion of physical ability to work, (2) points concerning physical ability which are not covered by any other subline under line 235, or (3) points covered by three or more sublines.

235.1 Age.

Discussion of the availability of minors or persons of advanced age.

235.15 Contagious disease.

Effect of such diseases on coworkers as factor affecting availability.

235.2 Hearing, speech, or vision.

Where defective hearing, speech, or vision has bearing on claimant's availability.

235.25 Illness or injury.

Types of illness or injury not covered by the specific sublines under line 235.

235.3 Loss of limb (or use of).

Where loss of limb, or loss of adequate use thereof has a bearing on availability.

235.4 Pregnancy.

Where a pregnant woman's availability for work is an issue.

250. Incarceration or other legal detention.

Applies to cases involving imprisonment, or detention of a worker.

285. Leave of absence or vacation.

Includes cases which discuss availability of claimants who are on a leave of absence or vacation.

295. Length of unemployment.

Effect of length of claimant's unemployment upon his availability for work.

305. Military service.

Includes cases considering the effect of military status—imminent discharge, furlough from military service, inactive or reserve military status, and military leave of absence upon a claimant's availability.

315. New work.

Only used in cases which discuss whether a given employment constitutes new work within the meaning of the term as used in section 1603 (a) (5) of the Internal Revenue Code, as amended.

320. Notification of address.

Includes cases in which the fact of notice, or the lack of such notice, by the claimant to the employment agency, or to an employer, is considered material to a determination of the claimant's availability.

350. Period of ineligibility.

Includes those cases where a claimant was ill for one or more days or absent from the area one or more days and where his eligibility for that particular week is in question.

360. Personal affairs.

Includes cases which discuss the availability of a claimant who is engaged in such matters as settling an estate, or attending to financial or casual affairs which cannot strictly be classified as domestic circumstances (line 155), health or physical condition (line 235), or self-employment or other work (line 415).

365. Prospect of work.

Includes cases which discuss a claimant's prospects for work of the type, and under the conditions, acceptable to him.

370. Public Service:

370.05 General.

Applies to cases containing a general discussion of "public service" and to cases discussing miscellaneous types of public service not included under "jury duty" or "public office," where the claimant's availability for work might be affected.

370.1 Jury Duty.

Availability of a claimant while serving as a juror.

370.15 Public office.

Availability of officeholders or candidates for office.

375. Receipt of other payments:

375.05 General.

Includes cases containing (1) a general discussion of the effect of receipt of other payments on claimant's availability, (2) points not covered by any other subline under line 375, and (3) points covered by three or more sublines.

375.1 Disability compensation.

Where the receipt of such compensation is considered in determining whether or not claimant is able to work.

375.25 Old-age and survivors insurance.

Where the filing for, or receipt of, such benefits is considered in determining claimant's availability. (NOTE: Cases discussing the reduction or cancellation of unemployment insurance benefits because of race old-age or retirement payments are covered in Miscellaneous division of the Code.)

375.3 Pension.

Consideration of the receipt of such payments in determining claimant's availability for work.

395. Relief work or public assistance.

Cases including (1) Work on relief projects, receipt of public aid or relief; (2) Domicile: assistance

in the form of a home for the aged, soldiers' home, or other institution, where non-acceptance of work may be a condition precedent to residence in such home.

415. Self-employment or other work:

415.05 General.

Includes cases containing (1) a general discussion of self-employment, (2) points not covered by any other subline under line 415, or (3) points covered by three or more sublines.

415.1 Agriculture.

Consideration of the availability of a claimant engaged in farming or living on a farm.

415.15 Commercial enterprise.

Participation in a commercial enterprise as affecting claimant's availability.

415.2 Family enterprise.

Effect of family enterprise on availability.

415.25 Professional work.

Availability of claimant engaged in professional work.

415.3 Salesman.

Availability of salesman.

450. Time:

450.05 General.

Includes cases containing (1) a general discussion of restrictions concerning time as affecting availability, (2) points not covered by any other subline under line 450, or (3) points covered by three or more sublines.

450.1 Days of week.

Where claimant will not work on certain days because of religious beliefs, domestic circumstances, or other reasons.

450.15 Hours:

450.151 General.

450.152 Irregular.

450.153 Long or short.

450.154 Night.

450.155 Prevailing standard, comparison with.

450.156 Statutory or regulatory standard, comparison with.

Claimant's insistence upon, or objection to, one or more of the above specified hours of work.

450.2 Irregular employment.

Involves restrictions to, or unwillingness to accept, irregular work.

450.4 Part time or full time.

Where claimant's availability is in issue because he either wants, or doesn't want, part-time or full-time work.

450.45 Seasonal.

Claimant's objection to, or insistence upon, seasonal work.

450.5 Shift.

Involves restrictions to, or unwillingness to accept, work on some particular shift.

450.55 Temporary.

Claimant's restriction to, or unwillingness to accept, temporary work.

475. Union relations:

475.05 General.

Includes cases containing (1) a general discussion of the effect of union requirements upon a claimant's availability, (2) points not covered by any other subline under line 475, or (3) points covered by three or more sublines.

475. Union relations - Continued

475.5 Membership.

Claimant's insistence upon retaining membership, or his refusal to institute or maintain union membership, as affecting his availability for work.

475.65 Remuneration.

Where claimant's insistence upon wages meeting the approval of his union affects his availability for work.

475.85 Restriction as to type of work.

Where claimant restricts himself to union work.

475.97 Working permit.

Effect of lack of a union work permit, or a claimant's failure to comply with the requirements for such a permit, on claimant's availability for work.

500. Wages.

Includes cases in which a claimant's insistence upon a wage, below which he will not work, affects his availability for work.

510. Work, nature of:

510.05 General.

Includes cases containing (1) a general discussion of the restrictions as to the nature of work with reference to claimant's availability, (2) points not covered by any other subline under line 510, or (3) points covered by three or more sublines.

510.1 Customary.

Where a claimant's insistence upon, or inability or unwillingness to accept, work in his usual occupation raises a question as to his availability for work.

510.15 Essential.

Used during the war and emergency period in cases where claimant's willingness or ability to accept war work, or other work essential to reconversion, affected his availability for work. For cases published on this point see line 190 in bound Series.

510.25 Home work.

Where claimants' desire to accept only work which can be performed in their homes, or where their inability or unwillingness to obtain governmental permit for the performance of such work, affects their availability for work.

510.3 Inside or outside.

Claimant's restriction to, or unwillingness to accept, inside or outside work.

510. Work, nature of - Continued

510.35 Light or heavy.

Where claimants, through preference or consideration of their physical well-being, restrict their

acceptance of work to that requiring less physical exertion or to sedentary work.

510.4 Preferred employer or employment.

Effect upon availability of claimant's willingness to work only for a particular employer, or in a particular employment.

515. Working conditions:

515.05 General.

Includes cases containing (1) a general discussion of working conditions or place, as affecting availability, (2) points not covered by any other subline under line 515, or (3) points covered by three or more sublines.

515.4 Fellow employee.

Where the claimant's availability is an issue because of his restrictions to, or objections to, working with particular individuals or supervisors.

515.5 Morals.

Where a claimant restricts the work, or the environment thereof, for reasons of morality.

515.55 Prevailing for similar work in locality.

Comparison of claimant's restrictions regarding working conditions with those existing for similar work in the locality. Includes cases in which consideration is given to the question of whether or not the "labor standards" provisions are applicable in such situations.

515.65 Safety.

Effort upon availability of a claimant's unwillingness to accept a particular job, or type of work, because of some alleged risk to life or physical safety.

515.75 Seniority.

Availability of claimants who restrict themselves to a particular employer, in order to protect and enjoy some advantage resulting from seniority with that employer, and of claimants who reject employment in which they cannot obtain seniority benefits.

515.85 Temperature or ventilation.

Claimant's objection to certain types of employment because of the temperature or ventilation involved.

515.95 Weather or climate.

Effect upon claimant's availability because of his objection to working under certain weather or climatic conditions, or when the weather prevents him from performing his type of work.